

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:12-cv-184
)	
KENNETH L. MILLER, et al.,)	
)	
Defendants.)	

OPINION AND ORDER

Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen ("movants") move the Court to dismiss the claims brought against them by Plaintiff Janet Jenkins. The motion is based on movants' reading of a settlement agreement between Jenkins and Defendant Lisa Miller, in which Jenkins agreed to release Miller and her "agents" from liability. Movants claim that, as Lisa Miller's former legal counsel, they were her "agents" and have therefore been released. Jenkins contends that despite the use of the term "agents," a reading of the entire settlement agreement makes clear that the parties only intended to release and dismiss Lisa Miller. For the reasons set forth below, the Court agrees with Jenkins and the motion to dismiss is denied.

Factual Background

The facts of this case are well established, and the parties' familiarity with those facts is assumed. Briefly stated, Jenkins claims that several parties, including the

movants, assisted Miller in kidnapping Jenkins' daughter, Isabella Miller-Jenkins. The operative complaint alleges intentional kidnapping and a conspiracy to engage in civil rights violations. ECF No. 223.

On February 16, 2022, in a separate criminal case, Miller pleaded guilty to parental kidnapping and was subsequently sentenced to time served. On May 26, 2022, shortly after Miller's sentencing, Jenkins informed the Court that the parties would try to resolve this case by means of mediation. The initial mediation occurred on October 7, 2022. While no agreement was reached, negotiations continued between Jenkins and Miller. On or about March 21, 2023, Jenkins and Miller entered into a settlement agreement. On March 23, 2023, Jenkins filed a notice of dismissal, dismissing Miller from the case without prejudice. ECF No. 706. No other parties were dismissed at that time.

The parties' settlement agreement expressly states that it is "between and among Janet Jenkins ('Jenkins') and Lisa Miller ('Miller')." ECF No. 718 at 1. The agreement further states that the Parties "wish to finally settle, end and fully and forever resolve the Dispute and Lawsuit with respect to Jenkins's claims against Miller." *Id.* at 2. Miller's consideration for the settlement includes her agreement to provide a proffer of anticipated testimony, some of which

testimony will detail movants' involvement in the alleged conspiracy, and to appear voluntarily for a one-day deposition. *Id.* at 2-3. Jenkins agreed to dismiss Miller from this case and to assist in the resolution of other related legal matters.

The settlement agreement includes a mutual release with the following language:

The Parties, on behalf of themselves, their successors, heirs, administrators, executors, or assigns, hereby release and discharge the other Party, *to include the other Party's agents*, and assignees, from all known and unknown ... claims, ... which either Party has, or may have had, against the other Party ... to include, but not limited to, all claims in any way related to the Lawsuit.

ECF No. 718 at 6 (emphasis supplied). The settlement agreement provides that it is to be enforced according to Vermont law, and that "[a]ll prior representations, commitments, and understandings between the Parties regarding the subject matter of this Agreement are merged into and replaced by this Agreement." *Id.* at 7.

Movants argue that as Miller's former attorneys, they were her "agents" and were therefore released by the settlement agreement. There is no dispute that Liberty Counsel and Lindevaldsen allegedly served as Lisa Miller's counsel. Jenkins argues that the settlement agreement, viewed in the context of the entire document and, if necessary, relevant extrinsic

evidence, compels the conclusion that the only party released was Lisa Miller.

Discussion

Movants submit their motion under Federal Rules of Civil Procedure 12(b)(1) and 12(h)(3), claiming lack of subject matter jurisdiction. In resolving motions to dismiss under Rule 12(b)(1), the Court must take all uncontroverted facts in the complaint as true and draw all inferences in favor of the party asserting jurisdiction. *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 243 (2d Cir. 2014). "But where jurisdictional facts are placed in dispute, the court has the power and obligation to decide issues of fact by reference to evidence outside the pleadings." *Id.* (citation omitted) (cleaned up). If subject matter jurisdiction is lacking, a court cannot proceed further. See Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

Here, movants rely exclusively upon the settlement agreement, which is outside the pleadings. That agreement is governed by Vermont contract law. See *Rogers v. Rogers*, 135 Vt. 111, 112 (1977). The question presented is whether, under Vermont law, movants are entitled to dismissal based upon the word "agents" in the settlement agreement's mutual release.

The Court “interprets the unambiguous terms of [a settlement agreement] as a matter of law.” *Bonanno v. Verizon Bus. Network Sys.*, 2014 VT 24, ¶ 13. “The cardinal principle in the construction of any contract is to give effect to the true intention of the parties.” *In re Cronan*, 151 Vt. 576, 579 (1989). “In order to effectuate the intentions of the parties, the literal terms of the contract cannot always be taken in isolation.” *Bonanno*, 2014 VT 24, ¶ 13. Instead, “the contract provisions must be viewed in their entirety and read together.” *In re Stacey*, 138 Vt. 68, 72 (1980). These pronouncements by the Vermont Supreme Court make clear that the term “agents” is not to be read in isolation. Instead, this Court must discern the intent of the parties in the context of the entire document.

A plain reading of the settlement agreement reveals a contract between two parties: Jenkins and Miller. Consideration is offered by each party in the form of agreements to undertake various acts. The agreement expressly addresses dismissal from the lawsuit, naming Lisa Miller as the only party to be dismissed. Other indications of the parties’ intent include the introductory statement describing the agreement “as entered into between and among Janet Jenkins (‘Jenkins’) and Lisa Miller (‘Miller’),” a listing of each party’s specific “obligations,” and a signature page with Jenkins and Miller confirming “the acknowledgement of the parties.”

Movants nonetheless urge the Court to focus on the word “agents” and order their dismissal from the case. For support, they cite Vermont case law for the proposition that the parties’ intent is reflected in the clear language of the contract. See, e.g., *N. Sec. Ins. Co. v. Mitec Elec., Ltd.*, 2008 VT 96, ¶ 28 (“We presume that the parties’ intent is reflected in the plain language of the release when that language is clear.”); *In re Adelphia Bus. Solutions of Vt., Inc.*, 2004 VT 82, ¶ 7 (“*Adelphia*”) (“[W]e interpret contracts to give effect to the parties’ intent, which we presume is reflected in the contract’s language when that language is clear.”). In *Northern Security Insurance Company*, the Vermont Supreme Court noted that “[a]s with any contract, our task ... is to ascertain the intent of the parties at the time of execution.” 2008 VT 96, ¶ 20. In *Adelphia*, the Vermont Supreme Court cited *In re Grievance of Verderber*, 173 Vt. 612, 615 (2002) (mem.), which held that “when the language of the contract is clear on its face, we will assume that the intent of the parties is embedded in its terms.” *Verderber* followed that statement with the maxim that “[w]e must, however, give effect to every part of the instrument and form a harmonious whole from the parts.” *Id.*

The briefing raises the question of whether, either in isolation or in the context of the entire agreement, the term “agents” is ambiguous. Movants urge the Court to find the term

clear and unambiguous and to look no further. The Vermont Supreme Court has opined that it is "appropriate, when inquiring into the existence of ambiguity, for a court to consider the circumstances surrounding the making of the agreement."

Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 579 (1988). Here, when considering such circumstances, the Court finds that the reference to "agents" does not include movants, and that the "writing in and of itself" does not "support[] a different interpretation from that which appears when it is read in light of the surrounding circumstances." *Id.*; see also *id.* at 580-81 ("If a contract, though inartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Allstate Ins. Co. v. Goldwater*, 163 Mich. App. 646, 648, 415 N.W.2d 2, 4 (1987)."); *Kipp v. Est. of Chips*, 169 Vt. 102, 107 (1999) ("If the court does not find the writing ambiguous, it must declare the proper interpretation as a matter of law.").

Moreover, any consideration of extrinsic evidence would favor Jenkins' position. Prior to the settlement, the parties informed the Court that they would be engaging in mediation. In March 2023, Jenkins notified the Court that she had settled with Miller, and that "[n]o settlement negotiations with other defendants are currently ongoing." ECF No. 705 at 2. Miller correspondingly informed the Court that she and Jenkins had

settled their dispute. ECF No. 709 at 1. In responding to movants' objection to Miller's dismissal from the case, Miller further stated that "[i]f Jenkin[s'] claims against [movants] are proven true, [movants] would be independently liable to Jenkins based on their alleged conspiring to deprive Jenkins of her civil rights." *Id.* at 2. Such statements make clear the parties' intent that movants remain defendants in this case.

Under Vermont law, this Court is to read the settlement agreement "in its entirety, so that the parts form a harmonious whole." *In re West*, 165 Vt. 445, 450 (1996). "In interpreting a release to determine whether a particular claim has been discharged, the primary rule of construction is that [the parties'] intention is to be determined by a consideration of what was within the contemplation of the parties when the release was executed, which in turn is to be resolved in the light of the surrounding facts and circumstances under which the parties acted." *Economou v. Economou*, 399 A.2d 496, 500 (Vt. 1979). Here, a full and fair reading of the settlement agreement makes clear that the release set forth therein pertained to Lisa Miller, and not to the co-defendant movants. The motion to dismiss is therefore denied.

Conclusion

For the reasons set forth above, the motion to dismiss Liberty Counsel, Inc. and Rena M. Lindevaldsen (ECF No. 718) is

denied. Movants' motion to stay proceedings pending resolution of their motion to dismiss (ECF No. 720) is denied as moot.

DATED at Burlington, in the District of Vermont, this 16th day of August, 2023.

/s/ William K. Sessions III
William K. Sessions III
U.S. District Court Judge